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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSHUA BRINGAZI,

Defendant and Appellant.

H046098

(Santa Cruz County

Super. Ct. No. 18CR03614)

Joshua Bringazi appeals following the trial court's imposition of a term of 180 days for his parole violation consecutive to a 90-day sentence for the crime of providing false identification to a peace officer (Pen. Code, § 148.9, subd. (a)).¹ Bringazi argues on appeal that the order to serve consecutive terms for the parole violation and the crime is unauthorized, and must be stricken. We agree, and will strike the order for consecutive terms.

I. STATEMENT OF THE CASE

In November 2017, Bringazi was released from prison and placed on parole. On February 7, 2018, Bringazi was found to have violated the terms of his parole and was returned to custody for 160 days. Bringazi was released on April 26, 2018.

Bringazi did not report to the parole office and was arrested for providing false identification to a police officer during a traffic stop. (§ 148.9, subd. (a).) Bringazi also

¹ All further unspecified statutory references are to the Penal Code.

failed to register as a sex offender and was not fitted with an electronic monitoring device as required by the terms of his parole.

On June 14, 2018, Bringazi pled guilty to providing false identification to a peace officer (§ 148.9, subd. (a)). A petition for parole revocation was filed alleging that Bringazi failed to report to his parole officer when he was released from custody, failed to participate in electronic monitoring, failed to re-register as a sex offender every 30 days, and violated the law when he provided false identification to a police officer.

On July 27, 2018, the court found Bringazi had violated his parole and ordered him returned to custody for 180 days to run consecutive to the 90-day sentence he received for providing false identification to a police officer. Bringazi filed a timely notice of appeal on August 13, 2018.

II. DISCUSSION

A. Mootness

The Attorney General argues that Bringazi's appeal is moot and should be dismissed because the 180-day confinement ordered as a result of his parole revocation has been completed and he is no longer incarcerated. We disagree.

Citing *People v. DeLeon* (2017) 3 Cal.5th 640 (*DeLeon*), the Attorney General argues that Bringazi's appeal should be dismissed as moot because this court cannot grant him effective relief. In *DeLeon*, the California Supreme Court held that a defendant's appeal from a parole revocation order was moot because at the time of the defendant's appeal, he had completed the jail term imposed for the parole violation and had been discharged from parole. (*Id.* at pp. 645-646.) The court stated: "a reviewing court's resolution of the issues could offer no relief regarding the time he spent in custody or the parole term that has already terminated." (*Id.* at p. 645.)

Here, unlike *DeLeon*, this court is able to grant relief to Bringazi. While it is likely Bringazi has completed his 180-day commitment for his parole violation, he is still on parole, which is not scheduled to expire until at least 2021. Further, under California

law, a defendant's parole period can be extended up to four years based on any parole violations. (See § 3000, subd. (b)(6) ["Time during which parole is suspended because the prisoner . . . has been returned to custody as a parole violator shall not be credited toward any period of parole"]; see also § 3000, subd. (b)(6)(A) ["in no case may a prisoner subject to three years on parole be retained under parole supervision . . . for a period longer than four years"].) The trial court's order that the 180-day return to custody term run consecutive to the 90-day sentence on the false identification case increases his parole period by 90 days. Because Bringazi remains on parole, the consecutive sentence order impacts him.

Here, modifying the consecutive sentence order to reflect two concurrent terms will have the effect of reducing the amount of time Bringazi's parole can be extended by 90 days. Thus, Bringazi's appeal is not moot and we will consider the merits.

B. Consecutive Terms

Bringazi argues, and the Attorney General concedes, that the trial court erred when it ordered that the 180 days for the parole revocation run consecutive to the 90-day sentence imposed for the false identification conviction.

Pursuant to section 3000.08, subdivision (f), when a parolee has violated the terms of parole, "the court shall have authority to do any of the following: [¶] (1) Return the person to parole supervision with modifications of conditions, if appropriate, including a period of incarceration in a county jail. [¶] (2) Revoke parole and order the person to confinement in a county jail." Section 3000.08, subdivision (g) provides: "Confinement pursuant to paragraphs (1) and (2) of subdivision (f) shall not exceed a period of 180 days in a county jail."

Bringazi cites *People v. Garcia* (2018) 22 Cal.App.5th 1061 (*Garcia*), for the proposition that consecutive terms for a parole violation and a separate criminal action are unauthorized. In *Garcia*, the defendant violated the terms of his post-release community supervision by absconding. The court ordered Garcia to serve 180 days for

the parole violation to run consecutive to a four-year prison term he received for an unrelated carjacking case. (*Id.* at p. 1064.) The Court of Appeal held the order that Garcia serve 180 days consecutive to the term for the criminal conviction was unauthorized and should be stricken. (*Id.* at p. 1065.) The court stated: “California law carefully distinguishes between confinement for parole or [post-release community supervision] violations on the one hand, and traditional ‘sentencing’ for criminal convictions on the other.” (*Id.* at p. 1065.) The court further noted that section 669, which authorizes consecutive terms for two or more crimes, does not allow the imposition of a parole revocation term to run consecutive to a determinate criminal sentence. (*Ibid.*)

Here, the trial court erred and imposed an unauthorized sentence when it ordered Bringazi to serve 180 days for violating parole consecutive to his 90-day sentence for providing false identification to a police officer.

III. DISPOSITION

The judgment is modified to strike the trial court’s order that the 180-day term for Bringazi’s parole violation run consecutive to his 90-sentence for providing false identification to a police officer. As modified, the judgment is affirmed.

Greenwood, P.J.

WE CONCUR:

Premo, J.

Elia, J.

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